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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,778	01/30/2004	George Matlock	687-3108/US	7157
34205 7590 03/21/2008 OPPENHEIMER WOLFF & DONNELLY LLP 45 SOUTH SEVENTH STREET, SUITE 3300 MINNEAPOLIS, MN 55402				
EXAMINER				
GIBSON, ROY DEAN				
ART UNIT		PAPER NUMBER		
3739				
MAIL DATE		DELIVERY MODE		
03/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/768,778

Applicant(s)

MATLOCK, GEORGE

Examiner

Roy D. Gibson

Art Unit

3739

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6, 8-16, 19-22, 24-30, 32-34 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-6, 8-14, 34 and 36-38 is/are allowed.
- 6) ☒ Claim(s) 15, 19-22, 24, 26, 29, 30, 32 and 33 is/are rejected.
- 7) ☒ Claim(s) 16, 25, 27 and 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Formal Matters

The allowability of several claims have been withdrawn as presented below, therefore, this Office action is non-final.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 15, 19-22, 24, 26, 29, 30, 32 and 33 are rejected under 35 U.S.C. 102(a) as being anticipated by Muller et al. (6,524,308). Muller et al. disclose an applicator and its method of controlling a temperature of the applicator body that delivers energy comprising:

- an applicator body (Figure 3) comprising a proximal portion and a distal portion;
- an electrode surface (32 or 33) on the distal portion of the applicator body for delivering therapeutic electrical energy therethrough;
- a conduit that delivers a coolant on a path through at least a part of the distal portion of the applicator body; and
- one or more heating elements thermally coupled, from within the applicator body, to the distal portion of the applicator body and entirely beneath the electrode surface to deliver a heating energy to the coolant in the conduit, wherein the energy is

sufficient to heat the coolant so that the electrode surface is at a desired temperature (col. 1, line 50-col. 2, line 36, col. 6, lines 20-44 and col. 7, line 29-col. 8, line 38). Note that col. 2, line 34-35, recite the electrode has a thermoelectric heating/cooling device in the form of a combination of resistance heaters and Peltier elements. This is interpreted as the back surface of the electrode has these elements thermally attached, thus the claim language above of "one or more heating elements thermally coupled, from within the applicator body, to the distal portion of the applicator body and entirely beneath the electrode".

This alternative embodiment appears to be an option to the fluid heater in Figure 8 and, in use, preheats the device via these heaters before applying RF or HF energy directly to the electrode for interstitial tissue coagulation. However, these heaters are capable of being activated as required to inherently provide uniform heating of the electrodes surfaces (typically within about 2 deg. C).

Muller et al. further discloses a temperature sensor (thermocouple) positioned adjacent the electrode (col. 3, line 30-col. 4, line 10); wherein the heating energy delivered to the heating element(s) is discontinued when the therapeutic energy is delivered to the electrodes (can serve as a preheater and is separately controlled) and further comprising a power supply coupled to the heating element(s), wherein the power supply is controlled with a temperature control algorithm (Figure 9 and col. 7, line 60-col. 8, line 45).

In a telephone interview with Adam Kiedrowski on March 13, it was agreed that that claims 2, 4 6 and 9 should be amended to provide relevance to the step of contacting a surface adjacent pelvic support tissue. Therefore, in the response to this Office action, the examiner suggests these claims reflect that agreement by adding to line 1 of each claim, after "body" the phrase "for treating incontinence".

Allowable Subject Matter

Claims 2-6, 8-14, 34 and 36-38 are allowed.

Claims 16, 25, 27 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy D. Gibson/
Primary Examiner
Art Unit 3739

March 17, 2008